

On August 27, 1999 appellant, then a 32-year-old part-time letter carrier, filed a traumatic injury claim alleging that he stepped on a tree root and twisted his knee on August 10, 1999. The Office accepted his claim for a sprain of the left knee and leg.

On March 15, 2001 appellant underwent surgery on his left knee consisting of microfractures of the femoral trochlea and lateral femoral condyle of the left knee and a lateral release of the knee due to a grade four lesion and lateral tracking patella.

In a report dated April 12, 2002, Dr. Roy A. Majors, an attending Board-certified orthopedic surgeon, opined that appellant had a 25 percent permanent impairment of the left lower extremity based on a chondral injury with secondary degenerative disease of the medial femoral condyle of the left knee.

On May 28, 2002 appellant filed a claim for a schedule award.

In a memorandum dated June 7, 2002, Dr. Harry L. Collins, Jr., a Board-certified orthopedic surgeon and an Office medical adviser, stated that Dr. Majors had not provided an impairment rating of appellant's left lower extremity based on the fifth edition of the A.M.A., *Guides*.¹ By letter dated November 6, 2002, the Office advised Dr. Majors to base his impairment rating of appellant's left lower extremity on the applicable tables in the fifth edition of the A.M.A., *Guides*.

On December 4, 2002 Dr. Majors indicated that appellant had a 25 percent permanent impairment of the left lower extremity based on a lesion at the time of surgery and physical findings of 2 degrees of extension and 130 degrees of flexion.

In a July 25, 2003 memorandum, Dr. Collins noted that Dr. Majors' determination of a 25 percent impairment of the left lower extremity was based on a lesion at the time of surgery. He stated that this condition did not qualify as a permanent impairment of the knee based on the A.M.A., *Guides*. Dr. Collins stated that decreased range of motion consisting of 2 degrees of extension and 130 degrees of flexion did not constitute a ratable impairment under the A.M.A., *Guides*.²

By letter dated October 28, 2003, the Office again requested that Dr. Majors provide an impairment rating based on the fifth edition of the A.M.A., *Guides*.

In a report dated November 12, 2003, Dr. Majors stated that appellant had a grade four (full thickness) chondral lesion of the femoral condyle which was a significant lesion with no cure. He stated:

"This is going to cause an aggressive acceleration of arthritis and degeneration to [appellant's] knee. He is already having recurrent effusions. The [A.M.A., *Guides*] do allow for operative findings of significant degree which [appellant] has.

"At this time based on [appellant's] high probability of accelerated arthritic wear and degeneration and significant morbidity, I would not change my rating from 25

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

² Based on Table 17-10 at page 537 of the A.M.A., *Guides*, appellant has no impairment for decreased range of motion consisting of 2 degrees of extension (flexion contracture) and 130 degrees of flexion.

[percent] permanent impairment to the left lower extremity. This impairment is an accumulative rating and would not be expected to change or worsen with time. It is the worse case scenario which appears to be inevitable in [appellant's] case.”

In a memorandum dated March 11, 2004, Dr. Collins noted that Dr. Majors indicated a full thickness chondral lesion of the left knee. He stated that the fifth edition of the A.M.A., *Guides* did not provide an impairment rating for this condition. Dr. Collins indicated that Table 17-31 at page 544 (Arthritis Impairments Based on Roentgenographically Determined Cartilage Levels) needed to be applied after x-rays of the cartilage level of appellant's knee were obtained. He recommended obtaining additional information from Dr. Majors.

By decision dated May 11, 2004, the Office denied appellant's claim for a schedule award on the grounds that the evidence did not establish that he sustained any permanent impairment of his left lower extremity causally related to the August 10, 1999 employment injury.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

ANALYSIS

The Board finds that this case is not in posture for a decision. In a March 11, 2004 memorandum, Dr. Collins indicated that Table 17-31 at page 544 was applicable to Dr. Majors' finding that appellant's work-related left leg injury had caused an acceleration of arthritic wear and degeneration in his left knee. In order to apply Table 17-31, x-rays showing the cartilage level in the knee must be obtained. Dr. Collins indicated that the Office should ask Dr. Majors to provide additional information. The Office issued the May 11, 2004 decision denying appellant's claim for a schedule award without obtaining the additional information from Dr. Majors. Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ The Board will remand the

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ *Willie James Clark*, 39 ECAB 1311 (1988).

case for the Office to obtain information from Dr. Majors to determine whether Table 17-31 is applicable to appellant's work-related left knee condition.

CONCLUSION

The Board finds that further development of the medical evidence is required in order to determine whether appellant has any permanent impairment of the left lower extremity entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2004 is set aside and the case is remanded for further development consistent with this decision.

Issued: January 25, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member